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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

December 15, 2015 - 9:03 a.m.
Public Utilities Commission
21 South Fruit Street Suite 10
Concord, New Hampshire

IN RE: SEC Docket No. 2014-04
SITE EVALUATION COMMITTEE:
Site 100 through Site 300
Rulemaking Proceeding.
(Meeting for Members to
Adopt JLCAR's Approval
of the Final Proposal on
Revised Rules and to discuss
the Petition by JLCAR to open
a rulemaking on the Suspension
and Revocation Rules.)

PRESENT:	SITE EVALUATION COMMITTEE:
Chrmn. Martin P. Honigberg <i>(Presiding as Chairman of SEC)</i>	Public Utilities Commission
Michele Roberge, Designee	Dept. of Environmental Serv.
Cmsr. Robert R. Scott	Public Utilities Commission
Cmsr. Kathryn M. Bailey	Public Utilities Commission
Cmsr. Jeffrey Rose	Dept. of Resources & Economic Development
William Oldenburg, Designee	Dept. of Transportation
Dir. Elizabeth Muzzey	Dept. of Cultural Resources (Div. of Historical Res.)
Roger Hawk	Public Member

Also Present: David K. Wiesner, Esq. (NHPUC)
Michael J. Iacopino, Esq. (Brennan Lenahan..)

Pamela G. Monroe, SEC Administrator

COURT REPORTER: *Steven E. Patnaude, LCR No. 52*

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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. We're here in SEC Docket 2014-04, maybe for the
4 last time. We have to deal with JLCAR's approval of the
5 rules as they were submitted following the Preliminary
6 Objection. And, at that time, JLCAR filed a petition for
7 us to open a rulemaking specifically on the suspension and
8 revocation rules, and the issues that OLS identified with
9 our version of those rules.

10 So, we'll deal with both of those items
11 this morning. Before we do that, let's identify who's
12 here today.

13 COMMISSIONER SCOTT: Good morning. I'm
14 Bob Scott, with the New Hampshire Public Utilities
15 Commission.

16 CHAIRMAN HONIGBERG: Martin Honigberg
17 with the Public Utilities Commission.

18 DIRECTOR MUZZEY: Elizabeth Muzzey with
19 the Department of Cultural Resources.

20 COMMISSIONER BAILEY: Kate Bailey with
21 the New Hampshire Public Utilities Commission.

22 MS. ROBERGE: Michele Roberge with the
23 New Hampshire Department of Environmental Services.

24 CMSR. ROSE: Good morning. Jeff Rose,

1 Commissioner of the Department of Resources & Economic
2 Development.

3 MR. HAWK: Roger Hawk, public member.

4 MR. OLDENBURG: Bill Oldenburg,
5 Department of Transportation.

6 CHAIRMAN HONIGBERG: I'll note for the
7 record that Mr. Oldenburg is here as a designee of the
8 Commissioner of the Department of Transportation,
9 Ms. Roberge is here as a designee of the Commissioner of
10 the Department of Environmental Services.

11 Mr. Wiesner, you want to help us with
12 specifically what we need to do with the rules as JLCAR
13 approved them.

14 MR. WIESNER: Well, as you noted,
15 Mr. Chairman, the JLCAR approved the revised rules as they
16 were submitted in response to the Preliminary Objections.
17 And, that approval was without further objection. So,
18 that permits the Committee now to adopt these as final
19 rules that will be filed, hopefully, today, and become
20 effective tomorrow.

21 The text of these rules that you have
22 before you are virtually identical to what was approved by
23 JLCAR. I do want to point out one change, which is an
24 editorial change. And, this appears in the 300 rules, on

1 Pages 8 and 9. And, this is an editorial change that we
2 made in response to a comment from the Office of
3 Legislative Services' staff.

4 This is in Site 301.05(b), Section --
5 Subsection (7), regarding photosimulations. It was a long
6 paragraph. What now appears as (8) used to be part of
7 (7). But it does help, in my view, and they also, to
8 break it out. And, have a shorter paragraph in
9 Subsection (7), and then (8) has the longer list of
10 specific requirements. And, then, as we turn to Page 9,
11 that required renumbering of Subparagraphs (9) and (10).

12 So, that's the only change. Other than
13 that, with all changes accepted, this is the text of the
14 rules as they were submitted to JLCAR and approved by
15 JLCAR.

16 CHAIRMAN HONIGBERG: Is the
17 rearrangement of the sections, breaking those items that
18 used to be part of (7) into what is now (8), did any of
19 the language change?

20 MR. WIESNER: None of the language has
21 changed. It's a purely editorial change in terms of
22 numbering.

23 CHAIRMAN HONIGBERG: And, this does not
24 in any way violate the complicated JLCAR processes and the

1 Rulemaking Manual to make an editorial change like this in
2 response to an OLS comment?

3 MR. WIESNER: No. Editorial changes
4 such as this do not require JLCAR approval. And, this is
5 specifically responsive to a comment made by the Office of
6 Legislative Services. And, the Manual is clear that, when
7 you file adopted rules, as we will later today, you just
8 note the editorial change that was made, and our cover
9 letter will do so.

10 CHAIRMAN HONIGBERG: All right. Does
11 anyone have any questions or comments?

12 *[No verbal response]*

13 CHAIRMAN HONIGBERG: So, Mr. Wiesner, I
14 need a motion to approve the rules at this time?

15 MR. WIESNER: To adopt the rules.

16 CHAIRMAN HONIGBERG: Adopt, okay.

17 COMMISSIONER SCOTT: I so move.

18 DIRECTOR MUZZEY: Second.

19 CHAIRMAN HONIGBERG: Is there any
20 further discussion?

21 *[No verbal response]*

22 CHAIRMAN HONIGBERG: Seeing none, all in
23 favor say "aye"?

24 *[Multiple members indicating "aye".]*

1 CHAIRMAN HONIGBERG: Are there any
2 opposed?

3 *[No verbal response]*

4 CHAIRMAN HONIGBERG: Okay. The "ayes"
5 have it.

6 Now, with respect to the petition that
7 JLCAR sent to us, to open a rulemaking on the revocation
8 and suspension rules, what are our options and obligations
9 here, Mr. Wiesner?

10 MR. WIESNER: There was -- and, this is
11 an instance where we included in the rules the word "may",
12 and JLCAR and OLS prefer the word "shall", with specific
13 criteria noted, in order to limit agency discretion in
14 what would otherwise be permissive actions taken pursuant
15 to the statutory language. They were willing to approve
16 these rules for final adoption by the Committee without
17 objection, but we did receive this petition for a
18 rulemaking.

19 Like any other petition for a
20 rulemaking, the Committee actually has the authority to
21 reject the petition and not take any action, or to address
22 it through a rulemaking initiative. And, in that regard,
23 if that's the course that the Committee chooses to take,
24 there seem to be two options: Either a completely

1 separate rulemaking undertaking, a separate docket that
2 would address only this change, specific criteria for
3 revocation or suspension of certificates; or, it could be
4 included in the rulemaking that will be initiated in the
5 coming year with regard to pipeline siting, as required by
6 Section 10(b) of 162-H.

7 CHAIRMAN HONIGBERG: Now, I know this
8 makes you unhappy, Mr. Wiesner, but that rulemaking is not
9 on your desk, as far as I know. I know you're going to
10 miss that. But that one I think is being handled by
11 Ms. Monroe.

12 Ms. Monroe, can you give us where we --
13 information about where we are on the gas rulemaking that
14 we're required to be doing by statute?

15 ADMINISTRATOR MONROE: So, I've been in
16 the process of reviewing these rules, to determine what
17 areas of this rulemaking would parallel with the statutory
18 requirement for the pipeline siting rules, and then
19 determine what other provisions we need to adopt. And,
20 we'll probably go through a very similar process, where we
21 request comments from the public, as to the provisions
22 that should be in those rules, to kick off that rulemaking
23 process. I'm hoping to have that started by Friday of
24 this week.

1 CHAIRMAN HONIGBERG: Does anyone -- does
2 either of you, or Mr. Iacopino, Attorney Iacopino who's
3 here as well, have any thoughts or recommendations as
4 whether, assuming we want to take on a rulemaking, whether
5 it makes more sense to do it as a separate rulemaking or
6 roll it into the gas rulemaking? And, the "it" in that
7 sentence is the consideration of the rule on suspension
8 and revocation.

9 MR. WIESNER: The only real difference I
10 can think of is that, you know, the pipeline rules are
11 going to be quite a bit more involved than the specific
12 criteria for suspension or revocation. And, therefore, it
13 might be possible to adopt rules that address JLCAR's
14 petition more quickly, sooner, have those rules in place,
15 if it's a separate rulemaking, rather than if it's
16 included in the pipeline siting rulemaking. But, you
17 know, the formal process takes a certain amount of time
18 regardless, and it's a matter of a couple months maybe.

19 So, I think the timing is the primary
20 consideration. But, balanced against that, you know, the
21 potential greater efficiency of having two rulemakings
22 going at the same time.

23 CHAIRMAN HONIGBERG: And, if we're
24 trying -- if one is moving faster than the other, there is

1 a distinct possibility of needing this group to come
2 together multiple times, additional types, is there not?

3 COMMISSIONER SCOTT: There may be
4 opportunities to double up, if you will. But, yes,
5 theoretically, that could require additional meetings of
6 the Committee.

7 CHAIRMAN HONIGBERG: Does anyone have
8 any thoughts on either the basic question of whether to
9 take this issue on, we are allowed to say "no", and, if we
10 do choose to take it on, how we should proceed?

11 Commissioner Bailey.

12 COMMISSIONER BAILEY: Thank you. I
13 think we should take it on, because JLCAR has asked us to.
14 And, I think, given the work that the Committee has to do
15 in the coming year, with all of the siting cases that we
16 have, it would be more efficient to combine the two into
17 one rulemaking.

18 CHAIRMAN HONIGBERG: Other thoughts or
19 comments from members of the Committee?

20 *[No verbal response]*

21 CHAIRMAN HONIGBERG: All right. I'm
22 going to construe -- I'm going to do this in two pieces.
23 Going to construe Commissioner Bailey's statement first as
24 a motion to basically grant the petition from JLCAR to

1 open a rulemaking on the suspension and revocation rules.
2 And, then, we'll take separately a consideration of doing
3 it in combination with the gas rulemaking.

4 Does that make sense to everybody? Is
5 there a second for that motion?

6 COMMISSIONER SCOTT: Second.

7 CHAIRMAN HONIGBERG: Any further
8 discussion?

9 *[No verbal response]*

10 CHAIRMAN HONIGBERG: Seeing none, all in
11 favor say "aye"?

12 *[Multiple members indicating "aye".]*

13 CHAIRMAN HONIGBERG: Any opposed?

14 *[No verbal response]*

15 CHAIRMAN HONIGBERG: All right. The
16 "ayes" have it.

17 Commissioner Bailey, you also --

18 COMMISSIONER BAILEY: Yes.

19 CHAIRMAN HONIGBERG: -- sign onto the
20 motion to combine the rulemaking being requested by JLCAR
21 with the gas rulemaking that we're required to do by
22 statute?

23 COMMISSIONER BAILEY: So moved.

24 CHAIRMAN HONIGBERG: Is there a second?

1 COMMISSIONER SCOTT: Second.

2 CHAIRMAN HONIGBERG: Is there any
3 further discussion?

4 *[No verbal response]*

5 CHAIRMAN HONIGBERG: Seeing none, all in
6 favor say "aye"?

7 *[Multiple members indicating "aye".]*

8 CHAIRMAN HONIGBERG: Is there any
9 opposed?

10 *[No verbal response]*

11 CHAIRMAN HONIGBERG: The "ayes" have it.
12 Mr. Wiesner, did we do that clearly and
13 plainly enough?

14 MR. WIESNER: That was perfect, Mr.
15 Chairman. And, we will respond to JLCAR to indicate that
16 that will be the course of action to be taken by the
17 Committee.

18 CHAIRMAN HONIGBERG: Is there any
19 further business we need to transact on anything that we
20 can do today?

21 ADMINISTRATOR MONROE: No.

22 MR. WIESNER: I'm not aware of any.

23 CHAIRMAN HONIGBERG: Director Muzzey.

24 DIRECTOR MUZZEY: For the record, I

1 would just like to thank Attorney Wiesner for all of his
2 patience and hard work and graciousness in helping us with
3 this rulemaking process.

4 MR. WIESNER: Thank you.

5 CHAIRMAN HONIGBERG: I'll second that.
6 No, I think a number of people in the course of this
7 process, and since then, have commented to me on the great
8 work that Attorney Wiesner did in putting this together,
9 and listening to everyone, and accommodating people's
10 reasonable requests, and even some of their unreasonable
11 requests, for assistance in this regard. I don't think
12 this would have happened without him, and we, I think, all
13 can't thank him enough.

14 So, with that, I'll entertain a motion
15 to adjourn?

16 COMMISSIONER BAILEY: So moved.

17 COMMISSIONER SCOTT: Second.

18 CHAIRMAN HONIGBERG: All in favor say
19 "aye"?

20 *[Multiple members indicating "aye".]*

21 CHAIRMAN HONIGBERG: We are adjourned.

22 ***(Whereupon the meeting was adjourned at 9:15 a.m.)***